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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

CLERK

KELVIN WILLIAMS,

Plaintiff,

vs.

CIVIL ACTION NO.: CV504-053

CARL HUMPHREYS, Warden;  
RANDALL HOLDEN, and  
Mr. COPELAND,

Defendants.

**ORDER**

After an independent review of the record, the Court concurs with the Magistrate Judge's Reports and Recommendations, to which Objections have been filed. In their Objections, Defendants Holden and Copeland ("Defendants") assert that the Magistrate Judge failed to sufficiently address the affidavit of Amy Pataluna, the dietitian advisor to the Georgia Department of Corrections, which they submitted in support of their Motions for Summary Judgment. Defendants contend that, regardless of how Standard Operating Procedure ("SOP") IVL01-0002 is interpreted, the Magistrate Judge failed to give adequate weight to Pataluna's affidavit. Defendants also contend that the medical evidence reveals that Plaintiff made no complaints about nausea, one complaint of abdominal pain, and that he had gained a pound since October 2003. Defendants allege that "it would be absurd for the Plaintiff [sic] would gain weight without a nutritionally adequate diet." (Doc. No. 84, p. 5.) Defendants aver that their denial of Plaintiff's grievance on this matter and that Plaintiff's medical records show that he is allergic to pork do not necessarily lead to the

Magistrate Judge's conclusion that Defendants may have been deliberately indifferent to Plaintiff's dietary needs. Finally, Defendants assert that the Magistrate Judge erred in recommending that they are not entitled to the defense of qualified immunity.

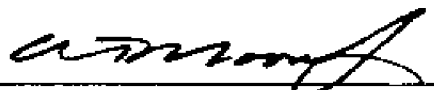
In her affidavit, Pataluna stated:

From December 2003 to the present, inmates who ate all of the food served to them, including pork, received an average of 3013 calories per day over the 28-day cycle. Inmates who chose not to eat pork and did not receive a pork substitute received an average of 2908 calories per day over the 28-day cycle, which is a sufficient number of calories for an average male between the ages of 19 and 50 based on the Recommended Dietary Allowances. Assuming that he does not have any special dietary needs noted in his institutional records, inmate Williams has received a sufficient number of calories even without the pork substitute since December 2003.

(Pataluna Aff., ¶ 4.) Pataluna's affidavit reveals that Plaintiff likely averaged receiving approximately 2908 calories a day since his arrival at Ware State Prison. However, even accepting this as true, evidence of an inmate's caloric intake is not indicative, in and of itself, of the inmate receiving a *nutritionally adequate* diet. Caloric intake does not speak to whether Plaintiff and other inmates receive the recommended amount of protein, vitamins, or other items necessary for a nutritionally adequate diet. In addition, the Court is reluctant to conclude that Plaintiff's weight gain is due to his receipt of a nutritionally adequate diet. Many factors could have contributed to Plaintiff's weight gain, such as a lack of physical activity or having to take certain medications which can cause a person to gain weight. Further, Plaintiff's medical records indicate that he is allergic to pork, and yet Defendants and other officials at Ware State Prison have not given him a dietary substitute for pork. The undersigned agrees with the Magistrate Judge that there are genuine issues of material fact as to whether Defendants were deliberately indifferent to Plaintiff's health and nutritional needs.

The Reports and Recommendations (Doc. Nos. 75 and 76) of the Magistrate Judge are adopted as the opinion of the Court. Defendants'<sup>1</sup> Motions for Summary Judgment (Doc. Nos. 28 and 44) are **GRANTED** in part and **DENIED** in part. Plaintiff's claims against Defendant Humphreys are **DISMISSED**. Plaintiff's monetary damages claims against Defendants Holden and Copeland in their official capacities are **DISMISSED**. Otherwise, Plaintiff's claims against Defendants Holden and Copeland remain pending.

SO ORDERED, this 13<sup>th</sup> day of SEPTEMBER, 2005.

  
WILLIAM T. MOORE, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

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<sup>1</sup> Carl Humphreys, Warden at Ware State Prison, also joined Defendant Holden's Motion for Summary Judgment. (Doc. No. 44.)

**United States District Court**  
***Southern District of Georgia***

Kelvin Williams  
\_\_\_\_\_ )

vs )

CASE NUMBER CV504-053

Carl Humphreys, et al.  
\_\_\_\_\_ )

DIVISION

WAYCROSS

The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated 9/13/05, which is part of the official record of this case.

Date of Mailing: 9/13/05

Date of Certificate



same date,

or

Scott L. Poff, Clerk

By: Kelvin Williams

Deputy Clerk

Name and Address

Andrew Marshall Magruder, Magruder and Owen, LLP, 2914A Professional Pkwy. Augusta, GA 30907  
Jesse Weatherspoon Owen, Magruder and Owen, LLP, 2914A Professional Pkwy. Augusta, GA 30907  
Kelvin Williams EF536342, Ware State Prison, 3620 Harris Road, Waycross, GA 31501



Copy placed in Minutes



Copy given to Judge



Copy given to Magistrate